

e2r Alert!

DON'T FORGET, HUMAN RIGHTS LEGISLATION EXTENDS TO JOB INTERVIEWS!

You have narrowed your list of candidates after reviewing resumes and now you have a potential candidate coming in for an interview. The interview process is the lynch pin of the recruiting process, allowing employers to identify whether the candidate has the requisite skills and abilities for the position as well as ensuring that they are the right fit for the organization. Given the importance of the job interview, asking the right questions is of central importance. However, organizations need to be mindful about avoiding the wrong questions during a job interview since failing to do so could result in a human rights complaint.

Generally speaking, job candidates are protected by human rights legislation and care should be taken to make sure that interview questions are tailored to only get information about qualifications and job requirements. The prohibited grounds vary from province to province and federally and therefore particular attention should be paid to the specific grounds applicable to the interview. It is also very important to note that an organization can be found liable for discrimination under human rights legislation where questions relating to a prohibited ground are asked (unless they are justified on the basis of a Bona Fide Occupational Requirement ("BFOR")), even where the prohibited ground has no impact on the decision not to hire (*or even hire*) the candidate. Where the candidate identifies disability-related needs as an issue in an interview, disability and accommodation measures related to the essential job duties can be discussed. Other than at an applicant's request, interviewers should only discuss on-the-job accommodation after making a conditional offer of employment.

A recent case from the Quebec Human Rights Tribunal [*Commission des droits de la personne et des droits de la jeunesse c. Systématix Technologies de l'information inc.*, 2010 QCTDP 18] serves as a good reminder to organizations that their interviewers should avoid discussing anything that relates to a prohibited ground (absent a BFOR), even if the employee brings the issue up for discussion. Specifically, a Quebec employer was recently ordered to pay \$7,500 to an applicant because an interviewer asked questions about the applicant's Muslim faith, even though the decision not to hire him related only to his lack of experience. In the Tribunal's view, just bringing up the subject violated the candidate's human rights. In arriving at its decision, the Tribunal noted that it did not matter who brought the subject up, and that proceeding with questions about a prohibited ground would cause a reasonable person to feel compelled to answer them. The Tribunal also noted that the candidate's willingness to answer the questions did not constitute a waiver of his rights under human rights legislation.

Bottom line: Unless questions respecting a prohibited ground relate to a candidate's ability to perform the essential duties of the job, they should be avoided. It should be noted that the onus to prove the questions were related to a legitimate job requirement is high. Employers should establish a standard interview questionnaire in order to ensure that questions asked during an interview are consistent and do not tread on prohibited grounds. Employers should provide training to all managers or supervisors who may be part of the interview process on appropriate interview etiquette, including questions which may and may not be asked.

If you have any questions about appropriate interview questions or what may qualify as a BFOR, please contact one of our e2r Solutions[®] service providers.

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